

MERLIN WILLIAMS

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF PARKS AND
PARKWAYS

NO. 7884

The Appointing Authority employs the Appellant as a Grounds Keeper III with permanent status. The Appointing Authority suspended the Appellant for fifteen (15) days by letter dated May 31, 2011, following a determination that he failed to properly secure his equipment in violation of internal rules. Specifically, the Appointing Authority determined that the Appellant used one chain instead of two when securing his riding lawnmower to the trailer used for transporting equipment. While transporting the lawnmower, the chain failed and the lawnmower fell from the trailer, striking a parked vehicle causing damage to the Appointing Authority's equipment and the parked vehicle.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on August 25, 2011. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The facts are not in dispute. The Appellant acknowledged that he was aware of the Appointing Authority's rules directing him to use two chains when securing equipment prior to transport. He contended that the accident was not his fault as he was only intending to transport the equipment two or three blocks until his supervisor instructed him to transport the lawnmower a longer distance. He also claimed that the nuts and bolts used for securing the chains were old and mismatched.

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LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. It was the Appellant's responsibility to properly secure the equipment in his charge. The accident in question resulted from his failure to

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do so. The Appellant's explanation for failing to follow proper procedure does not excuse or mitigate his misconduct. Regardless of the distance he intended to travel, the Appellant was required to secure his equipment with two chains. Moreover, when the Appellant received instructions from his supervisor to transport the equipment a longer distance, nothing prevented him from exiting his truck and securing the equipment with a second chain.

Accordingly, the Appointing Authority has met its burden of proof and the appeal is DENIED.

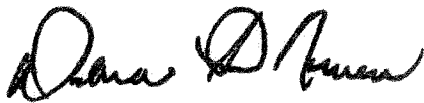
RENDERED AT NEW ORLEANS, LOUISIANA THIS 27TH DAY OF APRIL,
2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



REV. KEVIN W. WILDES, S.J., CHAIRMAN

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER